

APPEAL NO. 171804
FILED SEPTEMBER 21, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on February 7, 2017, with the record closing on June 26, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ).¹ The ALJ resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), extends to a lumbar sprain/strain; (2) the compensable injury of (date of injury), does not extend to cervical disc displacement with radiculopathy, cervical stenosis at C3-4, C4-5, and C6-7, lumbosacral radiculopathy, bilateral legs, disc protrusions at L2-3, L3-4, and L4-5, annular tears at L3-4 and L4-5, bowel dysfunction, and bladder dysfunction; (3) the appellant (claimant) reached maximum medical improvement (MMI) on December 14, 2015; and (4) the claimant's impairment rating (IR) is 10%. The claimant appealed, disputing the ALJ's determinations of the extent of injury that were adverse to the claimant as well as the ALJ's determinations of MMI and IR. The claimant contends that the evidence supports a finding in his favor of all the disputed issues. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, and IR determinations.

The ALJ's determination that the compensable injury of (date of injury), extends to a lumbar sprain/strain was not appealed and has become final pursuant to Section 410.169.

DECISION

Affirmed in part and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), and that the carrier has accepted as compensable cervical myelopathy from C3-7 and cervical stenosis. The claimant testified that he was injured when he was carrying three boxes up the stairs for delivery when he felt a sharp pain.

EXTENT OF INJURY

The ALJ's determination that the compensable injury of (date of injury), does not extend to cervical disc displacement with radiculopathy, lumbosacral radiculopathy, bilateral legs, disc protrusions at L2-3, L3-4, and L4-5, annular tears at L3-4 and L4-5,

¹ Section 410.152 was amended in House Bill 2111 of the 85th Leg., R.S. (2017), effective September 1, 2017, changing the title of hearing officer to ALJ.

bowel dysfunction, and bladder dysfunction is supported by sufficient evidence and is affirmed.

At the CCH, the parties agreed to modify the extent-of-injury issue, which included, in part, removing cervical stenosis as part of the disputed issue. As previously noted, the carrier accepted cervical stenosis as part of the compensable injury. Accordingly, we reverse the ALJ's determination that the compensable injury does not extend to cervical stenosis at C3-4, C4-5, and C6-7 by striking that determination as exceeding the scope of the issue before her.

The extent-of-injury issue before the ALJ included the conditions of cervical spondylosis and cervical herniations at C3-4, C4-5, C5-6, and C6-7. The ALJ failed to make a determination on these conditions.² Accordingly, we reverse the ALJ's extent-of-injury determination as being incomplete and remand to the ALJ for her to make a determination of whether the compensable injury of (date of injury), extends to cervical spondylosis and/or cervical herniations at C3-4, C4-5, C5-6, and C6-7.

MMI/IR

Given that a portion of the extent-of-injury issue has been reversed and remanded to the ALJ to make a determination consistent with this decision, we reverse the ALJ's determination that the claimant reached MMI on December 14, 2015, and the claimant's IR is 10% and we remand the issues of MMI and IR to the ALJ to make a determination consistent with this decision.

SUMMARY

We affirm the ALJ's determination that the compensable injury of (date of injury), does not extend to cervical disc displacement with radiculopathy, lumbosacral radiculopathy, bilateral legs, disc protrusions at L2-3, L3-4, and L4-5, annular tears at L3-4 and L4-5, bowel dysfunction, and bladder dysfunction.

We reverse the ALJ's extent-of-injury determination that the compensable injury does not extend to cervical stenosis at C3-4, C4-5, and C6-7, striking that determination as exceeding the scope of the issue before her.

We reverse the ALJ's extent-of-injury determination as being incomplete and remand to the ALJ to make a determination of whether the compensable injury of (date

² We note the opening paragraph of the decision and order discusses cervical herniations at C3-4, C4-5, and C6-7, but there are no supporting findings of fact or conclusions of law and the decision portion of the decision and order references cervical stenosis rather than cervical herniations at those levels.

of injury), extends to cervical spondylosis and/or cervical herniations at C3-4, C4-5, C5-6, and C6-7.

We reverse the ALJ's determination that the claimant reached MMI on December 14, 2015, and remand the MMI issue to the ALJ.

We reverse the ALJ's determination that the claimant's IR is 10% and remand the IR issue to the ALJ.

REMAND INSTRUCTIONS

On remand the ALJ is to address the specific extent-of-injury conditions the parties agreed were in dispute. The ALJ is to make a determination on the compensability of the disputed conditions of cervical spondylosis and cervical herniations at C3-4, C4-5, C5-6, and C6-7.

The ALJ is to make a determination of MMI and IR supported by the evidence. After determining the extent of the compensable injury, the ALJ is to then make a determination of MMI and IR considering the entire compensable injury. If a new certification or letter of clarification is necessary, the ALJ is to inform the designated doctor of the conditions which are part of the compensable injury. The parties are to be provided with the ALJ's letter to the designated doctor, the designated doctor's response, and to be allowed an opportunity to respond.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the ALJ, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **LM INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
211 EAST 7TH STREET, SUITE 620
AUSTIN, TEXAS 78701.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge